

10-26-2016

## State v. Ruggiero Respondent's Brief Dckt. 43726

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	No. 43726
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2012-2301
	)	
PHILIP MILTON RUGGIERO,	)	
	)	
Defendant-Appellant.	)	
_____	)	

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

\_\_\_\_\_  
**HONORABLE DEBORAH A. BAIL**  
**District Judge**  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Philip Milton Ruggiero appeals from the judgment of conviction entered upon the jury verdicts finding him guilty of three counts of preparing false evidence. Ruggiero contends the district court erred in two of its evidentiary rulings.

### Statement Of Facts And Course Of Proceedings

In Ada County Case No. CR-MD-2011-13936, the state charged Ruggiero with stalking.<sup>1</sup> (See #40175<sup>2</sup> R., p.80.) In that case, three letters were submitted to the magistrate that were typewritten and were purportedly from Lisa Roggenbuck, the victim of the alleged stalking, a “Spearmint Rhino Bouncer,” and Jenn Higginson. (#40175 R., pp.11-13, 80.) All three letters support the proposition that Ruggiero was not guilty of the stalking charge alleged in Case No. CR-MD-2011-13936. (Id.)

Based on the three letters submitted in Case No. CR-MD-2011-13936, the state charged Ruggiero with three counts of preparing false evidence in violation of I.C. § 18-2602. (#40175 R., pp.41-43.) Prior to trial, the state filed a notice pursuant to I.R.E. 404(b) indicating its intent to introduce evidence of the stalking

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<sup>1</sup> According to ICourt Portal, Ruggiero’s stalking case was resolved with Ruggiero pleading guilty to an amended charge of disturbing the peace.

<sup>2</sup> Pursuant to the Idaho Supreme Court’s order, the record in this appeal has been augmented with “the Clerk’s Record, Reporter’s Transcript and the Magistrate Transcript filed as an Exhibit” from Ruggiero’s prior appeal, State v. Ruggiero, Docket No. 40175 (Ada County Case No. CR-2012-2301).” (R., p.2.) The prior appeal resulted in the reversal of the district court’s ruling that I.C. § 18-2602 violated Ruggiero’s First Amendment rights. State v. Ruggiero, 156 Idaho 662, 330 P.3d 408 (Ct. App. 2014).

charge “to provide context of [Ruggiero’s] intent and motive” in relation to submitting false evidence in that case. (R., pp.40-41.) At the hearing on the state’s notice, the prosecutor indicated he did not “intend to belabor any of the underlying facts or circumstances,” but only intended to use the evidence “to establish the elements of the case.” (6/18/2015 Tr., p.10, L.23 – p.11, L.3.) The district court stated it was “not even sure” that I.R.E. 404(b) applied because it was “absolutely essential to the cause of action.” (6/18/2015 Tr., p.10, Ls.18-22; see also p.11, Ls.6-8 (“[T]here’s utterly no way to avoid this. It’s part of the charge itself. It is essential.”).) Defense counsel did not file a written response to the state’s notice, nor did she object to the evidence at the I.R.E. 404(b) hearing. (See generally R.; 6/18/2015 Tr., pp.10-12.) In fact, when asked at the hearing if she had any comments, defense counsel responded, “No, Your Honor.” (6/18/2015 Tr., p.11, Ls.4-5.) At trial, however, Ruggiero objected to the admission of evidence regarding the nature of his prior stalking case, and, in the middle of trial, Ruggiero offered to stipulate that there was a prior proceeding. (Trial Tr., p.169, Ls.15-19, p.170, L.23 – p.171, L.3.) The court overruled Ruggiero’s objection finding the existence of the stalking case was relevant, and not unduly prejudicial, but agreed that it was unnecessary “to go heavily into the details.” (Trial Tr., p.169, L.20 – p.170, L.2, p.171, Ls.4-13.)

Ruggiero also objected to the admission of the three letters, claiming the state failed to lay foundation establishing he was the author of the letters. (Trial. Tr., p.108, Ls.2-19; see also p.202, Ls.19-21 (motion to strike letters).) The court



overruled Ruggiero's objections. (Trial Tr., p.108, L.20 – p.109, L.11; see also p.202, L.22 – p.203, L.3 (motion to strike denied).)

The jury found Ruggiero guilty of all three counts of preparing false evidence. (R., pp.93-95.) The court imposed concurrent unified sentences of five years, with one year fixed, but suspended the sentences and placed Ruggiero on probation. (R., pp.106-109.) Ruggiero filed a timely notice of appeal. (R., pp.112-114.)

## ISSUES

Ruggiero states the issues on appeal as:

- I. Did the trial court err in allowing witnesses for the prosecution to testify regarding past charges without performing the required balancing test to determine relevance and prejudicial effect?
- II. Did the trial court err in admitting letters into evidence without authentication to support a finding that the letters are what the state claimed them to be?

(Appellant's Brief, p.4.)

The state rephrases the issues on appeal as:

1. To the extent Ruggiero's evidentiary objections are preserved, has he failed to show the district court erred in admitting the objected-to testimony regarding his prior stalking charge?
2. Has Ruggiero failed to show the district court erred in concluding the state presented sufficient foundation for the admission of the three false letters Ruggiero submitted in his stalking case?

## ARGUMENT

### I.

#### Ruggiero Has Failed To Show Error In The District Court's Ruling That Limited Evidence That Ruggiero Was Charged With Stalking In A Previous Case Was Relevant To Establish The Elements Of Falsifying Evidence In Relation To That Case

##### A. Introduction

Ruggiero contends the admission of “detailed testimony regarding [his] past stalking charge violated the applicable legal standards required by I.R.E. 404(b).” (Appellant’s Brief, p.5 (bold omitted).) Ruggiero further asserts “the trial court erred in admitting thorough and persistent testimony of a prior charge, even though the name and nature of the past offense created a risk of a verdict influenced by prejudicial considerations.” (Appellant’s Brief, p.6.) Ruggiero’s arguments fail for at least two reasons. First, to the extent his complaints are not preserved, this Court should decline to consider them. Second, application of the correct legal standards to the facts shows the district court did not err in admitting limited evidence that Ruggiero was previously charged with stalking because such evidence was necessary to establish the elements of the charged offense of falsifying evidence. Even if there was error in the admission of the evidence to which Ruggiero actually objected, any error was harmless.

##### B. Standard Of Review

Relevance is a question of law reviewed de novo, while balancing under I.R.E. 403 is reviewed for an abuse of discretion. State v. Norton, 151 Idaho 176, 190, 254 P.3d 77, 91 (Ct. App. 2011). Rulings under I.R.E. 404(b) are also reviewed under a bifurcated standard: whether the evidence is admissible for a

purpose other than propensity is given free review while the determination of whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice is reviewed for an abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009). In reviewing a trial court's discretionary decision, this Court evaluates whether the trial court correctly perceived the decision as discretionary, whether the trial court acted within the boundaries of its discretion and consistent with legal standards, and whether the court exercised reason in making its decision. Norton, 151 Idaho at 190, 254 P.3d at 91.

C. Ruggiero Has Failed To Establish Error In The Admission Of Any Of The Evidence Of His Prior Stalking Case To Which He Actually Objected

To be admissible, evidence must be relevant. I.R.E. 401, 402. Evidence that tends to prove the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence, is relevant. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989). "Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. However, such evidence may be admissible for a purpose other than that prohibited by I.R.E. 404(b)." State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2011) (citations omitted). Under I.R.E. 404(b), evidence of prior wrongs or acts may be admitted to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. I.R.E. 404(b); State v. Phillips, 123 Idaho 178, 845 P.2d 1211 (1993). "[E]vidence runs afoul of Rule 404(b) only if its purpose is

to ‘prove the character of a person in order to show that the person acted in conformity therewith.’” State v. Norton, 151 Idaho 176, 190, 254 P.3d 77, 91 (Ct. App. 2011) (quoting I.R.E. 404(b)).

In order to prove Ruggiero was guilty of falsifying evidence in violation of I.C. § 18-2602, the state was required to establish, beyond a reasonable doubt, that Ruggiero (1) “prepared a false paper or instrument in writing”; (2) “with the intent to produce it or allow it to be produced for any fraudulent or deceitful purpose as genuine or true, to wit, a false letter”; and (3) “upon any trial, proceeding or inquiry, authorized by law.” (R., pp.83-85.)<sup>3</sup> Thus, the elements of the offense required the state to present evidence of a “trial, proceeding or inquiry, authorized by law,” which was Ruggiero’s prior stalking case, as well as evidence of Ruggiero’s intent in submitting the false letters in that case. Ruggiero apparently recognized as much given his acquiescence in the state’s pre-trial I.R.E. 404(b) motion in which the state indicated its intent “to admit evidence of the underlying criminal charge to provide context [for Ruggiero’s] intent and motive.” (R., pp.40-41; see generally 6/18/2015 Tr.) Where evidence of a prior offense is necessary to establish one of the elements of the charged offense, the evidence is relevant and cannot be subject to exclusion under I.R.E. 404(b).

Notwithstanding his pre-trial acquiescence to the state’s I.R.E. 404(b) notice, Ruggiero did raise some objections during trial with respect to his prior

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<sup>3</sup> Because there were three separate false letters purportedly from different authors (Exhibits 1, 2, 3), there were three separate jury instructions for each count.

stalking case. (See, e.g., Trial Tr., p.99, L.20 – p.100, L.9 (objecting to any testimony from the prosecutor in the stalking case, claiming she did not “have anything with regard to the elements of the case”), p.169, Ls.15-19 (objecting to evidence relating to the nature of the relationship between Ruggiero and the victim in the stalking case), p.170, L.23 – p.171, L.1 (objecting to testimony from the victim in the stalking case regarding certain actions taken by Ruggiero).) However, it is unclear exactly what evidence Ruggiero is complaining of on appeal since he does not specifically cite any testimony or any particular objection as part of his I.R.E. 404(b) argument. (See generally Appellant’s Brief, pp.5-10.) Instead, he generally asserts that “testimony regarding a prior stalking charge is not relevant to the currently charged offense.” (Appellant’s Brief, p.9.) Ruggiero did not make such a general objection before or during trial. Rather, he only objected to specific portions of testimony. Ruggiero’s general appellate assertion that *no* evidence related to his prior stalking charge was relevant or admissible is not preserved. State v. Severson, 147 Idaho 694, 715, 215 P.3d 414, 435 (2009) (citation omitted) (“As a general rule, we will not consider arguments made for the first time on appeal.”); State v. Stevens, 115 Idaho 457, 459, 767 P.2d 832, 834 (Ct. App. 1989) (“an objection on one ground will not be deemed sufficient to preserve for appeal all objections that could have been raised”). Moreover, this Court should decline Ruggiero’s implicit invitation to “search the record on appeal for error.” Dawson v. Cheyovich Family Trust, 149 Idaho 375, 383, 234 P.3d 699, 707 (2010) (citation omitted). It is Ruggiero’s burden to show error; it is not the state’s or the Court’s job to look for it on his

behalf. Id. (“[T]o the extent that an assignment of error is not argued and supported in compliance with the I.A.R., it is deemed to be waived.”); Norton, 151 Idaho at 183, 254 P.3d at 84 (“This Court will not pore through a trial transcript and evaluate each question and answer in order to determine whether there is objectionable material, let alone add them up and analyze them as a collective due process violation.”).

Even if this Court elects to examine Ruggiero’s specific trial objections made in relation to evidence from his stalking case, and the district court’s rulings thereon, review of those objections and rulings shows no error by the district court.<sup>4</sup> Ruggiero made two specific objections during Lisa Roggenbuck’s testimony. (Trial Tr., p.169, Ls.17-19, p.170, L.23 – p.171, L.3.) Lisa was the victim in the stalking case and the purported author of one of the false letters submitted in that case. (Trial Tr., p.118, L.2 – p.119, L.10, p.122, L.15 – p.123, L.3; Exhibit 1.) Lisa testified that she was “one of the entertainers” at the Spearmint Rhino, which is where she met Ruggiero when he came in as a customer. (Trial Tr., p.167, L.19 – p.168, L.8.) Lisa described her relationship with Ruggiero as a “business relationship,” but not a friendship. (Trial Tr., p.169, Ls.9-14.) When asked whether the relationship ever changed, or whether “conduct ever escalate[d],” Ruggiero objected, arguing the prospective evidence

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<sup>4</sup> The state’s discussion of Ruggiero’s objections does not include his motion to exclude any testimony from the prosecutor in the stalking case because that objection was not based on I.R.E. 404(b), nor was it an objection to any particular testimony by that witness. (Trial Tr., p.99, L.20 – p.100, L.9.) Rather, it was a general “relevance” objection. (Trial Tr., p.100, Ls.5-9.) Absent any specific argument by Ruggiero with respect to the prosecutor’s testimony, the state should not be expected to construct a response.

was “prejudicial” and “ha[d] no relevance to anything to do with this case.” (Trial Tr., p.169, Ls.15-19.) The court overruled the objection, stating:

Well, because the nature of the charge is that there was preparation of false evidence for a proceeding, then it is relevant and admissible to discuss that there was a proceeding.

So I will allow counsel to proceed. It is relevant. And I don’t think it’s unduly prejudicial. It’s something we addressed pretrial.

(Trial Tr., p.169, L.20 – p.170, L.2.)

Ruggiero objected again a few questions later after Lisa testified that she called law enforcement “on the day that [Ruggiero] told [her] he had [her] license plate memorized,” recited it to her, and “described the clothes that [she] was wearing.” (Trial Tr., p.170, Ls.15-22.) In response to that answer, Ruggiero objected, stated he would “stipulate there was a proceeding” and argued: “We can’t retry what happened. And this is already trying to turn this into a stalking case. And, at this point, we’ll stipulate there was a court proceeding or a court filed [sic].” (Trial Tr., p.170, L.23 – p.171, L.3.) The district court responded:

I don’t think we need to go heavily into the details, Counsel.

So it is relevant that there was a stalking case, because it’s necessary there be a trial or proceeding. And a stalking case would be such.

And so I see it is relevant and admissible. And I’m not going to strike the witness’s response. But I think that it might be useful to get more directly to the proceeding.

(Trial Tr., p.171, Ls.4-13.) The prosecutor then “move[d] on.” (Trial Tr., p.171, Ls.14-15.)

On appeal, Ruggiero contends the district court’s admission of evidence of Ruggiero’s “prior stalking charge” violated I.R.E. 404(b) because the evidence



was “not relevant to the currently charged offense,” “the prosecution failed to establish the past stalking charge as fact,” and “[p]roviding the jury with the name and details of [his] past stalking charge unfairly prejudiced [him].” (Appellant’s Brief, pp.7-9, 11.) The most obvious flaw in Ruggiero’s argument on appeal is that he did not make an I.R.E. 404(b) objection at trial. He only argued the evidence was irrelevant and prejudicial. “[A]n objection on one ground will not be deemed sufficient to preserve for appeal all objections that could have been raised.” Stevens, 115 Idaho at 459, 767 P.2d at 834. An appeal is not the opportunity for trial counsel to raise objections she did not make at trial. Ruggiero’s I.R.E. 404(b) complaint in relation to Lisa’s testimony is not preserved. See State v. Cannady, 137 Idaho 67, 72, 44 P.3d 1122, 1127 (2002) (“Because [Cannady] did not base his objection upon Rule 404(b) of the Idaho Rules of Evidence, and such an objection was not apparent from the context, Cannady has not preserved that issue for appeal.”). The same is true for Ruggiero’s complaint that it was unfairly prejudicial to “[p]rovide the jury with the name” of his stalking charge because Ruggiero never objected to the jury knowing the name of the offense.

Ruggiero’s argument that the court erred by admitting evidence of his past stalking charge because “the prosecution failed to establish the past stalking charge as fact” fails not only because Ruggiero never made an I.R.E. 404(b) objection, but also because, even if he had, the requirement that a trial court “make a specific articulation as to whether there is sufficient evidence that the prior conduct occurred” arises “only if that question is squarely at issue.” State v.

Marks, 156 Idaho 559, 565, 328 P.3d 539, 545 (Ct. App. 2014) (citation omitted).

The question of whether there was sufficient evidence to establish Ruggiero's "prior bad acts as fact" was never "squarely at issue" in this case because Ruggiero did not challenge the facts underlying the stalking charge. His failure to do so is consistent with the conclusion that he did not object to the evidence under I.R.E. 404(b).

With respect to Ruggiero's prejudice argument, the only objection to prejudice was in response to the question: "Did the relationship ever change, or did conduct ever escalate?" (Trial Tr., p.169, Ls.15-19.) Even assuming the objection to this *question* was adequate to cover Lisa's answer two questions later that Ruggiero "started to think" they "had a relationship together," and they "were going to get married," this testimony was relevant and not unfairly prejudicial. The testimony was relevant because it provided the context for initiating the stalking case, *i.e.*, the proceeding in which Ruggiero submitted the falsified letters, which was an element of the charged offense in this case. The testimony was also relevant because it gave context to the statements made in the falsified letters and was evidence of Ruggiero's intent in writing the letters.<sup>5</sup> (See Trial Tr., p.174, L.4 – p.175, L.6 (Lisa reads false letter purportedly written by her).)

Lisa's objected-to testimony would only be subject to exclusion as unfairly prejudicial if it suggested decision on an improper basis. State v. Floyd, 125

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<sup>5</sup> The falsified letters were admitted at trial, but are not included in the record on appeal. (See R., p.130 (Certificate of Exhibits listing only the Presentence Investigation Report as an exhibit).)

Idaho 651, 654, 873 P.2d 905, 908 (Ct. App. 1994). As previously explained by the Idaho Supreme Court: “Under the rule, the evidence is only excluded if the probative value is substantially outweighed by the danger of unfair prejudice. The rule suggests a strong preference for admissibility of relevant evidence.” State v. Martin, 118 Idaho 334, 340 n.3, 796 P.2d 1007, 1013 n.3 (1990) (emphasis in original). That the evidence of Ruggiero’s prior conduct toward Lisa was unflattering does not mean it was unfairly prejudicial. See State v. Leavitt, 116 Idaho 285, 290, 775 P.2d 599, 604 (1989) (“Certainly that evidence was prejudicial to the defendant, however, almost all evidence in a criminal trial is demonstrably admitted to prove the case of the state, and thus results in prejudice to a defendant.”). Given the relevance of the evidence, indeed the necessity of the evidence to satisfy the elements of the charged offense, any prejudice was not unfair.

Ruggiero attempts to bolster his prejudice argument by claiming that any prejudice could have been avoided by accepting his willingness to stipulate to the existence of a prior proceeding. (Appellant’s Brief, p.12.) More specifically, Ruggiero contends the district court “erred by admitting evidence of the past stalking charge, since [he] repeatedly offered to stipulate to the fact that there existed a past proceeding; which was an element the prosecution needed to prove,” and agreed “to stipulate to the only relevant information.” (Appellant’s Brief, pp.9, 12.) Contrary to I.A.R. 35(a)(6), Ruggiero does not provide any citations to the record to support his claims. I.A.R. 35(a)(6) (“The argument shall contain the contentions of the appellant with respect to the issues presented on

appeal, the reasons therefor, with citations to . . . parts of the transcript and record relied on.”). The trial transcript reflects that, after his second objection to Lisa’s testimony, Ruggiero stated, “at this point, we’ll stipulate there was a court proceeding or a court filed [sic].” (Trial Tr., p.171, Ls.2-3.) It is unclear how this “offer,” made in the middle of testimony from the fourth state’s witness, reflects a “repeated” offer to stipulate to the existence of a prior proceeding, or what “relevant information” Ruggiero believes was included in this offer. It is also worth noting that, at trial, one of the key themes of Ruggiero’s defense was that there was no proceeding as contemplated by the elements of preparing false evidence. (See, e.g., Trial Tr., p.241, L.24 – p.242, L.3 (cautioning the jury not to “muddle through element No. 5 and pretend like it doesn’t matter”); see R., pp.83-85 (element 5 of the jury instructions states “upon any trial, proceeding or inquiry, authorized by law”).)

Notwithstanding the factual flaws in Ruggiero’s argument that he suffered prejudice because the court did not allow him to stipulate to the existence of a prior proceeding, his offer to stipulate has no bearing on whether he was, in fact, unfairly prejudiced by Lisa’s objected-to testimony. For the reasons already stated, he has failed to meet his burden of showing unfair prejudice. The Supreme Court’s opinion in Old Chief v. United States, 519 U.S. 172 (1997), upon which Ruggiero relies, does not change this conclusion. (Appellant’s Brief, pp.11-12.)

The defendant in Old Chief was charged with violating a federal statute that prohibited an individual with a prior qualifying conviction from possessing a

firearm. 519 U.S. at 174. Old Chief sought to preclude the Government from introducing evidence of his prior conviction “except to state that [he] had been convicted of” a qualifying offense. Id. (emphasis omitted). Old Chief offered to “stipulate to the fact of the prior conviction” and argued that, by doing so, “the name and nature of the offense [was] inadmissible under Rule 403 of the Federal Rules of Evidence, the danger being that the unfair prejudice from that evidence would substantially outweigh its probative value.” Id. at 175. With respect to the evidentiary issues presented in relation to evidence of Old Chief’s prior conviction, the Supreme Court held that “[a] documentary record of the conviction” was relevant because it made Old Chief’s status under the charged offense “more probable than it would have been without the evidence.” Id. at 179. Addressing the prejudice prong of the evidentiary analysis under F.R.E. 403, the Court noted that the “prior-conviction element” of the charged offense “generally carries a risk of unfair prejudice,” but “[t]hat risk will vary from case to case,” depending on the nature of the prior conviction relative to the nature of the defendant’s pending charges. Old Chief, 519 U.S. at 186. The Court also noted that a party’s willingness to concede an element is “pertinent to the court’s discretion to exclude evidence on the point conceded.” Id. at 184. Weighing the potential prejudice associated with admitting evidence of the name and nature of Old Chief’s prior conviction against Old Chief’s willingness to stipulate to the fact of conviction, the Court found there was “no cognizable difference between the evidentiary significance of an admission and of the legitimately probative

component of the official record the prosecution would prefer to place in evidence.” Id. at 191. The Court concluded:

For purposes of the Rule 403 weighing of the probative against the prejudicial, the functions of the competing evidence are distinguishable only by the risk inherent in the one and wholly absent from the other. In this case, as in any other in which the prior conviction is for an offense likely to support conviction on some improper ground, the only reasonable conclusion was that the risk of unfair prejudice did substantially outweigh the discounted probative value of the record of conviction, and it was an abuse of discretion to admit the record when an admission was available. What we have said shows why this will be the general rule when proof of convict status is at issue, just as the prosecutor’s choice will generally survive a Rule 403 analysis when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried.

Old Chief, 519 U.S. at 191-192.

The only “general rule” supported by Old Chief is that, when the existence of a prior conviction is an element of a charged offense, the record of the prior conviction should be excluded if the defendant is willing to stipulate to the existence of the conviction. Id. Otherwise, Old Chief endorses balancing the probative value of evidence against the danger of unfair prejudice when responding to an objection under Rule 403, which is what the district court did in this case *when* Ruggiero made an objection based on prejudice. As previously noted, the district court correctly balanced the probative value against the danger of unfair prejudice. Ruggiero’s eventual offer to stipulate to the fact of the prior proceeding did not change the balance given the timing of his offer to do so, which was after the jury had already been apprised, through other witnesses, of the existence of a prior stalking case. Forcing the state to accept the stipulation

at the time it was offered, instead of allowing the state to tell it's "story," which is a legitimate consideration under Old Chief, would have also created confusion given Ruggiero's efforts to establish, through an earlier witness, that there was no proceeding. (Trial Tr., p.149, L.14 – p.150, L.25.) Avoiding confusion is also a relevant consideration when balancing the admissibility of evidence under Rule 403. Moreover, any stipulation to the existence of the prior proceeding would have been ineffective in addressing the relevance of the limited factual basis for the stalking charge, which was to show that the content of the letters was false and to show Ruggiero's intent in writing the letters. Ruggiero's reliance on Old Chief to support his prejudice argument is unpersuasive.

In his final argument regarding prejudice, Ruggiero asserts the district court "abused its discretion when it failed to conduct a balancing test to determine whether the evidence of [his] past stalking charge had a prejudicial effect that outweighed its probative value." (Appellant's Brief, p.14.) For the first time, Ruggiero actually directs the Court to the objection that led to the ruling he challenges. (Appellant's Brief, p.14 (citing Trial Tr., p.169, Ls.20-23).) The objection was the first one he made during Lisa's testimony when she was asked whether her relationship with him ever escalated. (Trial Tr., p.169, Ls.15-19.) The objection was "prejudicial" and "no relevance." (Id.) The court responded to this objection as follows:

Well, because the nature of the charge is that there was preparation of false evidence for a proceeding, then it is relevant and admissible to discuss that there was a proceeding.

So I will allow counsel to proceed. It is relevant. And I don't think it's unduly prejudicial. It's something we addressed pretrial.

(Trial Tr., p.169, L.20 – p.170, L.2.)

On appeal, Ruggiero quotes the first paragraph of the court's ruling, but not the second paragraph in which the court specially states: "I don't think it's unduly prejudicial." (Appellant's Brief, p.14.) Instead, Ruggiero argues that the district court "simply" found the evidence relevant without balancing the evidence under I.R.E. 403. (Appellant's Brief, pp.13-14.) Ruggiero either ignores the district court's specific ruling regarding prejudice because it directly contradicts his claim, or he failed to read the entirety of the court's ruling. Either way, his argument that the district court failed to conduct an I.R.E. 403 analysis is contradicted by the record.

To the extent his evidentiary claims are preserved, Ruggiero has failed to show any error in the admission of Lisa's testimony.

D. Even If This Court Concludes Ruggiero Has Met His Burden Of Showing Evidentiary Error, Any Such Error Is Harmless

Even if this Court concludes that any of Lisa's objected-to testimony should have been excluded, the error is harmless. Idaho Criminal Rule 52 provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." I.C.R. 52. The relevant inquiry "is whether the complained-of error contributed to the verdict, or whether it was unimportant in relation to everything else the jury considered." State v. Neyhart, 160 Idaho 748, ---, 378 P.3d 1045, 1055 (Ct. App. 2016).

Lisa's objected-to testimony related limited information regarding Ruggiero's conduct that resulted in the underlying criminal proceeding in which



Ruggiero submitted false evidence. When considered in relation to all the other evidence the jury considered, this Court can easily conclude that Lisa's objected-to testimony did not contribute to the verdict.

Christine Starr testified that a falsified letter was submitted in relation to a stalking case against Ruggiero in which Lisa was the victim. (Trial Tr., p.118, L.2 – p.119, L.10, p.120, Ls.5-13.)

The Honorable Thomas Watkins, who presided over the stalking case, also testified that he received the letters in relation to a second-degree stalking case against Ruggiero. (Trial Tr., p.135, L.22 – p.136, L.9, p.138, L.23 – p.139, L.8.)

Kristy Wood, Ruggiero's ex-wife, testified that, during the time the letters were sent, she saw Ruggiero typing documents at home on his typewriter, and she specifically saw the letter that was purportedly written by Lisa (Exhibit 1). (Trial Tr., p.157, L.10 – p.158, L.24, p.159, L.21 – p.160, L.4.) Kristy also testified that she took Ruggiero, at his request, to buy perfume to spray on one of the letters, and she witnessed him spraying the letter purportedly written by Lisa. (Trial Tr., p.159, L.3 – p.160, L.10.) Ruggiero told Kristy he sprayed the letters "[s]o that it would smell like a female." (Trial Tr., p.164, Ls.2-11.)

Lisa also testified, without objection, that she did not write the letter purportedly authored by her, the contents of the letter were generally false, and the letter referred to certain behavior by Ruggiero. (Trial Tr., p.172, L.14 - p.176, L.17.)

Finally, Detective Angela Munson testified that Ruggiero ultimately acknowledged that he wrote the letters in order to “get out of trouble.” (Trial Tr., p.187, L.20 – p.188, L.11.)

That the jury received a limited amount of detail regarding the nature of the conduct underlying the stalking charge did not, in light of the other evidence presented, contribute to the jury’s verdict that Ruggiero submitted false letters in the stalking proceeding.

## II.

### Ruggiero Has Failed To Show That The District Court Abused Its Discretion In Overruling His Foundation Objections To The False Letters

#### A. Introduction

Ruggiero contends that the district court abused its discretion in overruling his foundation objections to the admission of the false letters that formed the factual basis of the three preparing false evidence charges. (Appellant’s Brief, pp.14-16.) Ruggiero’s argument fails because the record reveals that the state satisfied the evidentiary foundation requirements for admission of the three letters.

#### B. Standard Of Review

“Whether there is proper foundation upon which to admit evidence is a matter within the trial court’s discretion.” State v. Koch, 157 Idaho 89, 96, 334 P.3d 280, 287 (2014) (citation omitted).

C. The State Presented Adequate Foundation For The Admission Of The Three Fake Letters

Foundation for evidence is governed by Idaho Rule of Evidence 901, which provides: The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. I.R.E. 901(a). “By way of illustration,” but “not by way of limitation,” the rule provides that the foundation requirements can be met through “[t]estimony of a witness with knowledge that a matter is what it is claimed to be,” I.R.E. 901(b)(1), and when there exists “distinctive characteristics,” such as “[a]pppearance, contents, substance, [or] internal patterns . . . , taken in conjunction with circumstances,” I.R.E. 901(b)(4). “[C]ircumstantial evidence establishing that the evidence was what the proponent claimed” is sufficient for purposes of foundation under I.R.E. 901. State v. Koch, 157 Idaho 89, 96, 334 P.3d 280, 287 (2014) (citing cases); State v. Silverson, 130 Idaho 283, 285, 939 P.2d 859, 861 (Ct. App. 1997) (“[W]ritten and signed documents, like any other type of evidence, may be authenticated through any means ‘which is sufficient to support a finding that the matter in question is what its proponent claims.’ I.R.E. 901(a). This may include authentication through circumstantial evidence.”).

Prior to trial, Ruggiero moved to exclude Exhibits 1, 2, and 3, the three false letters, arguing that he “didn’t believe that the State would be able to authenticate th[e] letters.” (Trial Tr., p.108, Ls.3-6; see also p.108, Ls.18-19 (“I don’t think they can authenticate them.”).) The district court declined Ruggiero’s in limine request, correctly concluding that the state would have the opportunity

to lay the foundation at trial. (Trial Tr., p.108, L.20 – p.109, L.11.) During trial, the court admitted the letters “subject to being stricken” absent further foundation. (Trial Tr., p.141, L.18 – p.142, L.9.) At the conclusion of the trial, the district court concluded there was adequate foundation for admission of the letters “without limitation.” (Trial Tr., p.202, L.22 – p.203, L.3.)

Ruggiero contends the false letters “lacked proper foundation and were erroneously admitted into evidence” because the false letters “did not contain a signature,” and were not “created under an official duty to maintain records of service.” (Appellant’s Brief, p.16.) Ruggiero further argues the “state failed to offer convincing enough circumstantial evidence to substantiate the claim the letters were actually written by [him] and properly authenticated under I.R.E. 901.” (Appellant’s Brief, p.16.) Ruggiero’s arguments fail for at least two reasons.

First, adequate foundation for the letters did not require a “signature” or evidence that the letters were “created under an official duty to maintain records of service.” While such evidence would be proper foundation, I.R.E. 901 does not require such evidence in order to lay foundation. Indeed, the rule expressly states that, even the “examples of authentication or identification conforming with the requirements of th[e] rule” set forth in I.R.E. 901(b)(1)-(10), are only illustrative and not exclusive. I.R.E. 901(b); Koch, 157 Idaho at 96, 334 P.3d at 287 (“Rule 901(b) contains an illustrative, but not exhaustive, list of suggested methods of identification.”).

Second, the test for adequate foundation based on circumstantial evidence is not whether it was “convincing enough.” The test is whether the evidence is “sufficient to support a finding that the matter in question is what its proponent claims.” I.R.E. 901(a). That standard was satisfied in this case. The proponent of the letters – the state – claimed the letters were submitted to the judge in Ruggiero’s stalking case and provided evidence to that effect. The evidence supporting the foundation for that claim included Christine Starr’s testimony that she received Exhibit 1 in the context of Ruggiero’s stalking case (Trial Tr., p.119, L.17 – p.120, L.25), and Judge Watkins’ testimony that he received Exhibits 1, 2, and 3 in relation to Ruggiero’s stalking case (Trial Tr., p.135, L.22 – p.136, L.9, p.138, L.23 – p.139, L.8). That was all that was required in order to lay foundation for admission of the three letters. Although the state was required to prove that Ruggiero submitted the letters, and that the letters were false, in order to prove Ruggiero was guilty of the charged offenses (R., pp.83-85), such evidence was not required as part of the foundation for admission of the letters. Ruggiero’s claim to the contrary fails.

Even if the state was required to establish, as a component of foundation, that Ruggiero was the author of the letters, that standard was also satisfied. Kristy Woody testified that Ruggiero owned a typewriter, she saw him typing documents during the relevant time period, she specifically saw the letter admitted as Exhibit 1, which purported to be from Lisa, and she saw Ruggiero spray perfume on it so it would “smell like a female.” (Trial Tr., p.156, L.2 – p.160, L.4, p.164, Ls.2-11.) Lisa testified that the contents of Exhibit 1 were

factually false, and that she did not author Exhibit 1. (Trial Tr., p.172, L.14 – p.176, L.21.) Finally, Detective Munson testified that Ruggiero acknowledged that he wrote the letters in an effort to “get out of trouble.” (Trial Tr., p.187, L.24 – p.188, L.11.) Detective Munson also noted the similarities between the letters, which made her suspect all three letters “were written by the same person.” (Trial Tr., p.182, L.8 – p.183, L.23.) Those similarities included the same “general letter writing format,” they all “had the case number at the top of the letter,” “there were misspellings on all three of them,” “none of them had signatures or handwritten signatures at the bottom,” “they were all written around the same timeframe,” and “they were all addressed to Judge Watkins.” (Trial Tr., p.183, L.24 – p.184, L.11.) In other words, all three letters had “distinctive characteristics” indicating they were written by the same author (Ruggiero), for the same purpose (to improperly influence the resolution of his stalking case). The district court correctly concluded that this evidence was more than adequate to support the foundational prerequisite that Exhibits 1, 2, and 3 were what the state claimed, *i.e.*, false letters submitted by Ruggiero in his stalking case.<sup>6</sup> Compare Koch, 157 Idaho at 97-99, 334 P.3d at 288-290 (recognizing that content may be considered in assessing foundation); State v. Chacon, 145 Idaho 814, 817, 186 P.3d 670, 673 (Ct. App. 2008) (“The Idaho Rules of Evidence d[o]

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<sup>6</sup> To the extent the actual letters are necessary to consider whether there was adequate foundation for their admission, as noted, the letters themselves are not included in the record on appeal. (See R., p.130.) The “appellant bears the burden to provide an adequate record upon which the appellate court can review the merits of the claims of error, and where pertinent portions of the record are missing on appeal, they are presumed to support the actions of the trial court.” State v. Coma, 133 Idaho 29, 34, 981 P.2d 754, 759 (Ct. App. 1999) (citations omitted).

not require the state to present expert testimony or forensic evidence establishing that [a particular individual] authored [a document] in order to properly authenticate [it].").

Ruggiero has failed to meet his burden of showing the district court erred in admitting Exhibits 1, 2, and 3.

### CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon the jury verdict finding Ruggiero guilty of three counts of preparing false evidence.

DATED this 26th day of October, 2016.

/s/ Jessica M. Lorello  
JESSICA M. LORELLO  
Deputy Attorney General

### CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 26th day of October, 2016, served two true and correct copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

JESSICA B. BUBLITZ  
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/s/ Jessica M. Lorello  
JESSICA M. LORELLO  
Deputy Attorney General

JML/dd